

EXHIBIT 11

1

C O N F I D E N T I A L

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In Re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Adv.Pro.No.
08-01789(BR L)

Debtor.

-----x
IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,

Plaintiff,

Adv.Pro.No .
09-1182(BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.
-----x

DEPOSITION of MICHAEL E. AUTERA, JR.,
as taken by and before NANCY C. BENDISH, Certified
Court Reporter, RMR, CRR and Notary Public of the
States of New York and New Jersey, at the offices of
BAKER & HOSTETLER, 45 Rockefeller Plaza, New York,
New York on Monday, September 26, 2011, commencing
at 9:43 a.m.

61

C O N F I D E N T I A L

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re:

[illegible]

IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC,
Plaintiff,
v.

VOLUME II
Adv.Pro.No
09-1182(BRI

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

DEPOSITION of MICHAEL E. AUTERA, JR.,
as taken by and before NANCY C. BENDISH, Certified
Court Reporter, RMR, CRR and Notary Public of the
States of New York and New Jersey, at the offices of
BAKER & HOSTETLER, 45 Rockefeller Plaza, New York,
New York on Wednesday, October 19, 2011, commencing
at 10:32 a.m.

BLMIS v. MERKIN, et al.

CONFIDENTIAL

MICHAEL E. AUTERA, JR. 10/19/11

84

1 don't recall doing that.

2 Q. Do you recall when you would receive
3 confirmations of the execution of those options?

4 A. We would receive trade confirmations
5 with the trade tickets on the equities.

6 Q. And how soon after the trade date
7 would you receive those?

8 A. It would vary over the course of
9 time.

10 Q. Can you give me a range?

11 A. Early on was several days. Could be
12 a week. Later and more recently it was just a few
13 days after trade date.

14 Q. By a few days, would that be three?

15 A. Could be two, three days.

16 Q. Well, was it ever more quick than
17 two?

18 A. Not that I recall.

19 Q. How would you be able to verify if
20 those options were done contemporaneously with the
21 equities if you received the confirmations no sooner
22 than two days afterwards?

23 A. Again, I don't recall ever checking
24 that, but compare the trade dates would be the only
25 way from the trade confirmation.

BLMIS v. MERKIN, et al.

CONFIDENTIAL

MICHAEL E. AUTERA, JR. 10/19/11

91

1 document. With that correction to some of his
2 testimony, you can answer the question.

3 A. I believe I would have read the final
4 document.

5 Q. On page 4, the final paragraph reads:
6 "The partnership will act as a master fund for Ascot
7 Fund Limited, the offshore fund, an exempted company
8 incorporated in the Cayman Islands, which will
9 invest substantially all of its capital in the
10 partnership."

11 Did you have any involvement in the
12 decision to change the arrangement for Ascot Fund
13 into a master feeder with Ascot Partners?

14 MR. MENNITT: Objection to the form.

15 A. I recall discussing the structure to
16 change to a feeder structure.

17 Q. Who did you have those discussions
18 with?

19 A. I recall discussing it with the
20 outside counsel and I recall speaking to Mr. Merkin
21 about it.

22 Q. I don't want to know the substance of
23 conversations, of course, with outside counsel, but
24 I would like to know what was said with Mr. Merkin.

25 A. I don't recall specifically, but I

BLMIS v. MERKIN, et al.

CONFIDENTIAL

MICHAEL E. AUTERA, JR. 10/19/11

92

1 think we talked about the benefits of creating a
2 feeder structure as opposed to having Ascot Fund and
3 Ascot Partners investing separately.

4 Q. And what are those benefits?

5 A. Since the two funds were being
6 managed pari passu by Mr. Merkin, it made sense to
7 have one fund invest into the other that would cut
8 back on the level of paperwork, the trading,
9 reporting and things like that.

10 Q. So, in other words, it was more
11 efficient to accomplish the same trading for the
12 Ascot, the two Ascot funds, if there were a master
13 feeder relationship?

14 A. Again, I don't know about the
15 trading, but it was more efficient from the
16 operations and back office standpoint, which was
17 where my involvement was.

18 Q. Do you know if the same consideration
19 was given to Gabriel Partners and Ariel Fund? If
20 there was consideration to change them to a master
21 feeder arrangement?

22 A. Not that I recall.

23 Q. I ask you to turn to page 14. And
24 the second full paragraph is entitled "Limited
25 Partner Withdrawals" and I ask you to read that

BLMIS v. MERKIN, et al.

CONFIDENTIAL

MICHAEL E. AUTERA, JR. 10/19/11

113

1 Q. If they wired it, where would the
2 wire go to?

3 A. For Ascot Partners it would go to
4 Ascot's brokerage account at Morgan Stanley &
5 Company.

6 Q. And a check, where would that go?

7 A. The check would come to Gabriel
8 Capital Corp. Gabriel Capital Corp. would deposit
9 it at the Morgan Stanley account.

10 Q. For the portion of Ascot that was
11 invested through BLMIS, take me through the steps of
12 how that money went from the Morgan Stanley
13 brokerage account to the custody of BLMIS.

14 A. Mr. Merkin would decide the amount
15 of -- if there was a change, he decided to make a
16 change, whether to add money to the Madoff account
17 or take money out of the Madoff account, that
18 decision would be made, and he would let me know and
19 I would send a wire request. If the money was going
20 to the Madoff account, generally I would send a
21 request to Morgan Stanley asking them to wire funds
22 to Morgan Stanley -- to Madoff. And if Madoff, if
23 we were taking money out of the Madoff account, I
24 would send instructions to the Madoff firm asking,
25 telling them -- instructing them to wire the funds

BLMIS v. MERKIN, et al.

CONFIDENTIAL

MICHAEL E. AUTERA, JR. 10/19/11

114

1 to Morgan Stanley.

2 Q. The wires to and from BLMIS, do you
3 recall where that account was? Where the money
4 actually would have gone?

5 A. My recollection is that Madoff
6 Securities used a bank account at JPMorgan.

7 Q. And within the account, turning to
8 the Morgan Stanley brokerage account, was there any
9 segregation of assets there for investors in Ascot
10 versus Ariel and Gabriel, or was it all just one
11 fund -- one account?

12 A. I'm sorry, just ask that again,
13 please.

14 Q. Sure. You said for investors in
15 Ascot that whether it was by wire or check being
16 deposited, eventually the money ends up in a
17 brokerage account at Morgan Stanley, correct?

18 A. Yes.

19 Q. Is that also the case for investors
20 in Ariel and Gabriel?

21 A. Yes.

22 Q. And specifically is it correct then
23 that investors in Ariel and Gabriel, their money
24 either by wire or check would find its way into the
25 Morgan Stanley brokerage account?

BLMIS v. MERKIN, et al.

CONFIDENTIAL

MICHAEL E. AUTERA, JR. 10/19/11

202

1 Can you look at the last page, which
2 we'll represent appears to be from, I think
3 Bloomberg -- from Bloomberg and appears -- and it's
4 reflective of the open high/low and close of this
5 equity for the range of the 16th to the 22nd. You
6 see where I'm picking that range from? Do you see
7 that?

8 A. Say the range again, I'm sorry.

9 Q. February 16th through 22nd.

10 A. Yes.

11 Q. If you look at the trade date of what
12 is stated on this confirm being the 16th, can you
13 tell us what it says is the high and low for that
14 date.

15 A. This screen shot says the high is 52
16 dollars and the low is \$50.25.

17 Q. Okay. And the price on this monthly
18 statement, however, says a price higher than the
19 high reflected on the screen shot, correct? Because
20 it says \$52.59?

21 A. That's correct.

22 Q. I thank you for all your time and
23 your answers today and last time and working through
24 these documents with us.

25 Was there ever an analysis done of

BLMIS v. MERKIN, et al.

CONFIDENTIAL

MICHAEL E. AUTERA, JR. 10/19/11

203

1 the kind that this is reflective of where there was
2 comparison of -- let me back up.

3 Did anybody ever bring to your
4 attention the fact that the monthly statement prices
5 and confirm prices are prices outside of the daily
6 trading range for the stock?

7 A. No.

8 Q. Appears 2002 to 2008?

9 A. No.

10 Q. Anyone ever discuss the fact that
11 there are either confirmations or monthly statements
12 reflective of prices that were outside the daily
13 high/low trade range?

14 A. For that period?

15 Q. For that period for any of the three
16 funds that we've been talking about.

17 A. Until 2008?

18 Q. Yes.

19 A. No.

20 Q. Was there ever discussion with
21 Mr. Merkin that you're aware of where he indicated
22 knowledge about that?

23 A. No.

24 Q. Have you or Mr. Merkin to your
25 knowledge ever directed anyone to do an analysis of

BLMIS v. MERKIN, et al.

CONFIDENTIAL

MICHAEL E. AUTERA, JR. 10/19/11

204

1 this kind of actually pulling out a Bloomberg and
2 doing -- of seeing whether or not what was on a
3 monthly statement or confirm was in fact within the
4 range of that particular day and as reflected on
5 those statements?

6 A. I'm not aware of anyone directed to
7 do that.

8 Q. And you're not aware of anyone in
9 fact doing that; would that be fair?

10 A. I do recall that there was someone
11 who came in and looked at the Madoff activity and
12 analyzed it.

13 Q. I'm asking about someone came in,
14 someone from outside GCC?

15 A. Yes.

16 Q. I'm asking at any point in time if
17 anyone at GCC ever in fact do the analysis to see
18 whether or not what was reflected as the price for a
19 purchase or sale as being in fact within the daily
20 high or low of -- high and low of that particular
21 security?

22 A. Not that I'm aware of.

23 Q. Now, if you would, you said that
24 someone had come in and looked at that. When was
25 that, and who was that?

BLMIS v. MERKIN, et al.

CONFIDENTIAL

MICHAEL E. AUTERA, JR. 10/19/11

227

1 MR. MENNITT: We will reserve our
2 questions for the time of trial.

3 MR. GOTTHOFFER: I'll reserve, but it
4 may be not for the time of trial, but may be pending
5 document production, some of the other things we've
6 been discussing, but nothing at this time.

7 MS. MALASKA: Nothing now but we
8 reserve our right to ask questions later.

9 (Deposition concluded 4:15 p.m.)

10 -o0o-

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25